80-703

No. _____

Supreme Court, U. S.
FILED
OCT 30 1980
MICHAEL RODAK, JR., CLER

SUPREME COURT OF THE UNITED STATES

October Term, 1980

RICHARD A. LAUCHLI, Jr.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the United States Court of Appeals for the Seventh Circuit and the United States District Court for the Southern District of Illinois decide the instant case within the framework of the Constitution of the United States and the United States Code?

In conformity with Rule 21 (b) of the Rules of the Supreme Court, the United States Court of Appeals for the Seventh Circuit and the United States District Court for the Southern District of Illinois are deemed parties to this proceeding. The District Court mentioned is at Spring-Field, Illinois although a judicial redistricting now places that Court outside of the Southern District of Illinois.

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JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Seventh Circuit issued it's final Order in this case on June 16, 1980 and it's Order Denying the Petition for Rehearing and Suggestion for rehearing *in banc* on August 1, 1980.

The Order of June 16, 1980 is attached hereto as an Appendix.

Jurisdiction of this Supreme Court is conferred by Article III, Section 2 of the Constitution of the United States.

Further, Congress conferred jurisdiction upon the Supreme Court by 28 United States Code, Section 1254 (1) and by 28 United States Code, Section 1651 (a).

STATEMENT OF THE CASE

The United States Court of Appeals has rendered this instant decision in conflict with the decisions of this Supreme Court of the United States and other United States Court of Appeals and has sanctioned and departed from the accepted and usual course of judicial proceedings to such an extent as to require the exercise of this Supreme Court's power of supervision; to wit:

i. The Appellate Courts seeks to invoke estoppel to prevent petitioner Lauchli from gaining relief as to the "firearms" not being firearms within the meaning of the law (this being pre/1968 law or law occurring prior to Congress repealing and repassing laws which govern firearms). The District Court did not consider estoppel in it's deliberations nor is it clear in the

record whether the jury in the criminal case found Lauchli guilty of one or one hundred transfers. In fact, the record is devoid of any instructions to the jury on manufacture at all.

The Appellate Court relies on Emich Motors Corp v. General Motors Corp., 340 U.S. 558, 568-69 (1950). At 572 this Supreme Court detailed the requirements for estoppel and none were complied with.

Further, the Appellate Court seeks to claim that Lauchli's claim to the protection of the Fifth Amendment has been litigated. This Supreme Court remanded in Lauchli v. United States , 402 U.S. 938 (1971). When the case arrived at the District Court, the issue was confined to whether or not Lauchli was in a "suspect Class". Lauchli was refused the right to introduce witnesses (two high police officials, one from Springfield, Illinois

and one from Jacksonville, Illinois). The District Court decided Lauchli was not in the "suspect class". This decision was and is in direct conflict with this Supreme Court's ruling in Haynes v. United States, 390 U.s. 85 (1968) and the decision in Lauchli v. United States, 402 F.2d 455, 456 (8th Cir. 1968).

ii. The Appellate Court claims that Lauchli was not prejudiced by the delays encountered in this case. The delays encountered were not caused by the Government in this case but neither did the Government seek to end them. The District Court and the Appellate Court are to blame.

If evidence is lacking from the record on the health of District Judge Poos, it is because a hearing has been refused by the District Court, the Appellate Court, and the Courts Administration Office.

Lauchli sought a hearing from each of them. The Appellate Court seeks to base it's opinion on the fact that Judge Poos prepared the Finding of Facts and Conclusion of Law but that is not so. That document was prepared by Judge Poos' law clerk, James C. Busch and it ws turned down by Judge Poos three times when he was in better health than the day he purportedly "signed" it. Judge Poos was in a nursing home in Hillsboro, Illinois on May 27, 1976 suffering from terminal cancer and emphazema when visited by James C. Busch who guided Judge Poos' hand to make the signature.

iii. The Appellate Court seeks to avoid a prejudice by stating that Lauchli's home has increased in value during the nine years of litigation. What the Appellate Court overlooks is that the interest on the tax lien continues at the rate of over $6000 per year.

iv. The Appellate Court is wrong on dismissing Lauchli's claim to "legal burn-out". No-one can know how it is to suffer the rejections from the Appellate Court that Lauchli has suffered. That Lauchli has been unable to win this case is proof, indeed that he is unable to properly present his meritorious case. The Appellate Court does not say "burn-out" doesnt exist; it simply says it is a subjective allegation. The Appellate Court should hold a hearing and see what can be proven.

v. Finally, the Appellate Court seeks to uphold the use of false identies and statements by Government agents. None of the cases cited by the Appellate Court are analogous to this case in any manner whatsoever. Indeed, no case has been found which is. However, petitioner Lauchli derives considerable comfort

from a reading of United States v. Bramblett, 348 U.S.503 (1955). The fallacy that Government officers are exempt from the law must not be allowed to stand.

In compliance with Rule 21.1 (i): Petitioner Lauchli has never believed and has disputed that the United States District Court at Springfield, Illinois had original jurisdiction in this matter.

ARGUMENT

The actions and Opinions of the United States District Court and the United States Court of Appeals for the Seventh Circuit violate the Due Process and Self Incrimination rights of the Petitoner. The Courts, below, are clearly in defiance of this Supreme Court's decisions in Haynes v. United States, 390 U.S. 85 (1968)and companion cases as well as United States v U.S. Coin and Currency, 401 U.S. 715 (1971).

The United States Court of Appeals for the Seventh Ci_cuit is in conflict with the United States Court of Appeals for the Eight Circuit in Lauchli v, United States, 402 F.2d 455, 456 (1968) and the Supreme Court decision in Lauchli v. United States, 402 U.S. 938 (1971).

This Supreme Court there found that:

" The provisions in issue here are part of an interelated system for taxing ***. The

taxes are supplemented by ancillary provisions calculated to assure their collection. *** The issue is instead whether the methods employed by Congress *** are, in this situation, consistent with the limitations created by the privilege against self-incrimination guaranteed by the Fifth Amendment. *** we hold only that those who properly assert the Constitutional privilege as to those provisions may not be criminally punished for failure to comply with their requirements."

Marchetti v. United States, 390 U.S. 39

Grosso v. United States , 390 U.S. 62

Further, this Supreme Court said:

"It was ***the method Congress had adapted in collecting the tax that raised the Fifth Amendment question. Since it was only the method of tax collection which was subject to Constitutional objection, we indicated that the Government remained free to collect taxes due under the statute so long as it did not attempt to punish the taxpayer for his failure to file the required documents."

United States v. U.S. Coin and Currency,

401 U.S. 715 (1971).

But the factis that the Government put Lauchli in the penitentiary and therefore lost the right to collect any taxes.

This Supreme Court is urged to remember that the law here being considered is the pre-1968 version of the National Firearms

Act and not the post 1968 Gun Control Act.

i,

This Supreme Court's power of supervision is necessary in that the United States Court of Appeals for the Seventh Circuit has so far departed from the accepted and usual course of judicial proceedings.

The Appellate Court's use of estoppel is void where, as here, there is no indication that the issue before the Appellate Court was given to the jury with suitable instructions. Emich Motors Corp v. General Motors Corp., 340 U.S. 558, 568-69 (1950). Further, it is well settled that an unConstitutional action may not be used as a foundation for a new action.

ii.

The delays in this case are intolerable. It is twenty two years since some of the actions in the Complaint have occurred. It is more than sixteen years since the actions sought to be here taxed have

occurred. The Complaint in this Action was filed originally at Terre Haute, Ind. on July 26, 1968. There has never been one word of explanation as to why any of the delays encountered were necessary. This is a denial of Due Process rights in a gross manner.

Petitioner Lauchli timely raised objection to the delays. On August 4, 1971 Lauchli stated in a Motion for Summary Judgement:

" The plaintiff has failed to diligently prosecute his claim, such as it is, and has defaulted in filing a brief in support of his claim."

And in a Motion for Relief under Title VIII of the F.R.C.P., Lauchli said:

" The United States has done nothing in this case for over a year." (April 21, 1972).

In a Motion to Strike (September 6, 1972):

"Further, in answer to the Memorandum, it must be pointed out that this case stems

from events that occurred more than fourteen years ago. As pointed out to this Court in the Brief of Defendant submitted to this Court on April 8, 1971, the witnesses are dead, the evidence destroyed. This is due to the plaintiff's delay -- not to any delay caused by Lauchli."

On March 20, 1973, Lauchli said in a Renewed Motion for Summary Judgement, etc.: "On March 18, 1973 Lauchli withdrew his offer of compromise because of the inherent delay and a desire to continue this action in the Courts."

The Appellate Court states that Lauchli filed fifteen motions. How many of them were to build a fire under the Courts to get a move on? This Supreme Court should exercise it's supervisory powers in this instance.

Judge Poos was in such bad shape that on May 8, 1976 (19 days before he "signed" the Findings of Fact and Conclusions of

Law) he was admitted to the Memorial Hospital in Springfield, Illinois where Drs. Harp and Paul feared the cancer had spread to his brain. On May 27, 1976 Judge Poos was too weak to stop James C. Busch from forcing his hand into a "signature". Indeed, Dr. Paul's records indicate a numbness and weakness in Judge Poos' right arm on May 8, 1976.

iii.

If twenty years of delay are not sufficient to show prejudice then we believe other showing will also be insufficient. A reading of many cases show no delay of such magnitude. This is not a course of judicial proceedings in the usual and accepted sense.

iv.

Lauchli has fought and won cases in the Eight Circuit. He has fought and won cases in the State Courts. He has fought

and won cases for other persons in the Seventh Circuit. But he has never won a case in the Seventh Circuit for himself. When a person knows they are right and knows what they are doing is right and still lose a case, they become frustrated. When so frustrated, a person retreats into himself, rejecting friends and refusing to communicate. A typewriter, which once was the salvation, now becomes an object to be shunned. Why read law books? Nobody abides by the decisions therein anyhow. That is legal burn-out. Twenty years is too long, what's the use. With 10,000 other cases, what chance have I in the Supreme Court.

v.

While no case has been found in analgy, this is not to suggest that the question preeented is isolated. Law officers lie and conceal their identities every day. The question is whether or not

such officers of the law are exempt from the law. Petitioner Lauchli submits that they are not. To borrow from United States v. Lee, 106 U.S. 196 (1882):

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the Government, from the highest to the lowest, are creatures of the law and are bound to obey it. * * *
If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well regulated liberty and the protection of personal rights."

Without doubt, the Government will state that it needs to go undercover. Whether or not it needs that manner is up to Congress. We are bound by the law and the law uses the word "whoever" and that is all encompassing.

Certainly any officer applying to a Court for permission to go undercover where justified, would be granted permis-

sion. This is a decision for Courts to make, not officers. It is inherently unfair to have atwo person conversation where one person goes to jail if he lies and the other gets a promotion. This question is so important in American life that this Supreme Court is unlikely to be called upon to make a more important decision in this term.

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

Submitted: June 11, 1980 [1]/
June 16, 1980

unpublished Order

not to be cited

per Circuit Rule 35

BEFORE

Hon. Thomas E. Fairchild, Chief Judge

Hon. Walter J. Cummings, Circuit Judge

Hon. Wilbur F. Pell, Jr., Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 78-1516 vs.

RICHARD A. LAUCHLI, JR., a/k/a
Richard Albert Lauchli,

Defendant-Appellant.

) Appeal from the United
) States District Court
) for the Southern District
) of Illinois, Springfield
) Division.

A /.

) J. Waldo Ackerman, Judge.

ORDER

In 1964, taxpayer Lauchli sold and delivered one Bren machine gun and seven Browning automatic rifles to a federal undercover agent. Shortly thereafter, Lauchli rehabilitated and transfered 102 Thompson machine guns to the same officer. Lauchli was convicted of making and transfering the firearms without paying a tax and without registering as a manufacturer in violation of the National Firearms Act, 26 U.S.C. ss 5801-5872 (the Act). His conviction was affirmed by this court on December 5, 1966. United States v. Lauchli, 371 F.2d 303 (7th Circuit. 1966)

1/ After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the

court in this case. The notice provided that any party might file a "Statement as to Need for Oral Argument." See Rule 34(a Fed.R. App. P.; Circuit Rule 14(f). Lauchli has filed such a statement and requested oral argument. Upon further consideration of the briefs and record in this appeal, the request for oral argument is denied and the appeal is submitted on the briefs and record. Circuit Rule (f) (1).

On May 19, 1967, the Treasury Department assessed $51,922.46 in unpaid excise taxes (firearms) against Lauchli, pursuant to 26 U.S.C. ss 5811 and 5821. On July 26, 1968, the government filed its complaint to foreclose a tax lien upon real property in which Lauchli holds an undivided interest. The late Judge Omer Poos entered the court's Findings of Fact and Conclusions of Law on March 27, 1976, and a final order of foreclosure was entered

by Judge Waldo Ackerman on September 12, 1977. Lauchli appeals from this order pro se under 28 U.S.C. ss 1291. See also Lauchli v. United States, 481 F.2d 408 (7th Cir. 1973); Lauchli v. United States 432 F2d 1207 (7th Cir. 1970); Lauchli v United States, 427 F.2d 258 (7th Cir. 1970).

I

26 U.S.C. ss 5811 authorizes the Treasury Department to collect a tax of $200 on the transfer, of any firearm which shoots or which isdesigned to shoot automatically or semiautomatically, more than one shot without manual reloading. See also 26 U.S.C. ss 5848 (definitions of firearms). This transfer tax is payable by the transforer of the firearm. Similarly, 26 U.S.C. ss 5821 authorizes the Treasury Department to collect a tax of $200 on the making of any firearm whether by manufactur, putting together

alteration, any combination thereof, or otherwise. This making tax is payable by the person who makes the firearm. The Treasury Department assessed these taxes against Lauchli after his conviction for making and transferring firearms in violation of 26 U.S.C. ss 5801-5872 was affirmed by this court in United States v Lauchli, 371 F.2d 303 (7th Cir. 1966).

Lauchli contends that this assessment was erroneous because the items transferred were not "firearms" and because the excise taxes infringe his constitutional guarantee against self-incrimination. Both of these contentions are without merit.

In affirming his conviction in 1968, this court expressly rejected Lauchli's contention that these items were not firearms within the meaning of the Act because "the evidence revealled that the purchasers demanded operable machine guns,

and ... (Lauchli) testified that he expected the machine guns to fire automatically upon assembly." 371F.2d at 312. Insofar as Lauchli is attempting to re-litigate this issue, he is collaterally estopped from doing so by this court's earlier finding. "It is well established that a prior criminal conviction may work an estoppel in favor of the Government in a

subsequent civil proceeding." EMICH MOTORS Corp. v. General Motors Corp., 340 U.S. 558, 568-69 (1950). Accord Heidelberg v. Hammer, 577 F.2d 429, 431 (7th Cir, 1978); Williams v Liberty, 461 F.2d 325 (7th Cir. 1972).

Lauchli's argument that the National Firearms Act inherently violates his right against self-incrimination was previously raised as achallenge to his 1965 conviction for violation of the Act. In Lauchli

v. United States, 432 F.2d 1207 (7th Cir. 1970), This issue was remanded for an evidentiary hearing to determine whether manufacturers and transforers of firearms were an inherently suspect class and whether Lauchli's conviction was therefore unconstitutional under the principles set forth in Haynes v. United States, 390 U.S. 85 (1968). The District Court's finding that the Act created no suspect class and posed no automatic hazard of self-incrimination was affirmed in Lauchli v. United States 481 F.2d 408, 411 (7th Cir. 1973). In view of this previous determination of Lauchli's Fifth Amendment claims, he is collaterally estopped from relitigating that point in this proceeding.

It should be noted, however, that the District Court found the taxpayer liable for the transfer tax on all 110 firearms, but found him liable for the

making tax on only 103 of them. Page 5a Findings of Fact and Conclusions of Law, United States v. Lauchli, (S.D. Ill. March 27, 1976). The Government concedes that it incorrectly calculated the making tax on all 110 guns and that therefore the case should be remanded for recomputation of the tax and interest thereon in accordance with the district court's finding. See Govt. Br. at 13 n.8.

II

Most of Lauchli's remaining contentions relate to the long delay from filing of the Government's case in the district court to the entry of that court judgement foreclosing the tax liens on Lauchli's property.

In a civil case, delay is not per se unconstitutional. Ad Hoc Committee v. Massachusetts, 488 F.2d 1241, 1244 (1st Cir. 1973). Rather, to invoke due process rights, the aggrieved party must

show that the delay resulted in some prejudice to him. U.S. ex rel Sims v. Sielaff, 563 F.2d 821 (7th Cir. 1977). Regarding the sheer length of the delay, the record shows that during the nine years of litigation in the district court lauchli filed a total of fifteen different motions requiring rulings by the district court and two notices of appeal. While the government did move once to vacate the case from the trial calendar in January, 1969, Lauchli is at least as much to blame for the delay as the government.

As instances of prejudice arising from the delay, Lauchli points to the deteriation of Judge Poos' health, the increased value of Lauchli's real property and his own condition of "legal burnout." These contentions are specious.

Although Judge Poos' health was poor when he signed the Findings of Fact and

Conclusions of Law in May, 1976, there is no evidence in the record that his condition interfered with his mental faculties. Indeed, his finding that Lauchli was liable for the making tax on only 103 of the 110 firearms involved serves to illustrate that he was in full command of his powers of reason and judgement at the time. Secondly, the increased value of Lauchli's property may make satisfaction of the tax lien easier now than it would have been at the time the suit was filed. Certainly no prejudice to Lauchli arises from this fact. Lauchli's further contention that he is too "burnt-out" to adequately represent himself is such a subjective allegation that it cannot be a basis upon which legal prejudice may be premised. Moreover, Lauchli has managed to present all of the legal and factual arguments he claims are available to him, both here and

in the district court.

III

Finally, Lauchli claims that the evidence of his illegal transfer of firearms is inadmissible in this tax proceeding because the Government agents to whom he transferred the firearms in question violated 18 U.S.C. ss 1001 2/ by acting undercover. This bizarre proposition fails because undercover identities by law enforcement officers does not violate ss 1001. The purpose of ss1001 is not to prohibit the use of false identities by undercover agents, but to protect

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2/ Section 1001 provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a matrrial fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more

than $10,000 or imprisoned not more than five years, or both.

the Government from harmful fraud and false information. See United States v. Bramblett, 348 U.S. 503 (1955); United States v. Lambert, 470 F.2d 354 (5th Cir. 1972), vacated on other grounds, 501 F.2d 934 (5th Cir. 1974); Friedman v. United States, 374 F.2d 363 (8th Cir. 1967).

For the reasons given above, the judgement of foreclosure is affirmed and the case is remanded for recalculation of the tax owed in accordance with the district court's findings.

Supreme Court, U. S.
FILED
DEC 9 1980
MICHAEL RODAK, JR., CLERK

No. 80-703

In the Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD A. LAUCHLI, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-703

RICHARD A. LAUCHLI, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In this federal excise tax case, petitioner seeks review of the decision below holding that he was liable for federal excise taxes on the making and transferring of certain firearms, and that his interest in a parcel of real estate should be foreclosed to satisfy this tax liability.

The pertinent facts are undisputed and may be summarized as follows: In 1964, petitioner transferred one fully automatic Bren machine gun, and seven Browning and one hundred two Thompson

machine guns to an undercover agent of the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department. In connection with these transfers, petitioner failed to pay the excise tax required by 26 U.S.C. 5811(a). In 1965, petitioner was convicted for transferring these machine guns without paying the transfer tax. This conviction was affirmed. *United States* v. *Lauchli*, 371 F.2d 303 (7th Cir. 1966) (Pet. App. A2, A6).

Prior to transferring the Bren and Thompson machine guns, petitioner had made them serviceable. However, he failed to pay the excise tax imposed by 26 U.S.C. 5821(a) on the "making" of a firearm (Pet. App. A2; R. 3a),[1] which includes the acts of putting together or altering a firearm. See 26 U.S.C. 5845(i).

On May 19, 1967, the Internal Revenue Service assessed these unpaid federal excise taxes against petitioner in the amount of $51,922.46 (Pet. App. A3). On this date, the Service sent a notice of assessment and a demand for payment. On July 6, 1967, the Service filed a notice of federal tax lien for these unpaid excise taxes with the Recorder of Deeds of Madison County, Illinois, where petitioner owned an undivided one-half interest in certain real property (R. 2a-4a).

On July 26, 1968, the government filed its complaint in the district court to reduce this assessment to judgment.[2] On October 9, 1969, the government

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[1] "R." refers to the record appendix attached to the government's brief in the court of appeals.

[2] The complaint was filed in the United States District Court for the Southern District of Indiana because petitioner was then incarcerated there. This action was thereafter transferred to the United States District Court for the Southern District of Illinois (R. 1a).

filed a complaint against petitioner and his wife to foreclose the federal tax lien against petitioner's real property, to sell it, and to apply the proceeds of the sale against petitioner's outstanding tax liabilities (Pet. App. A3; R. 1a-2a).

After a consolidated trial, the district court found: (1) that the machine guns transferred by petitioner in 1964 were "firearms" within the meaning of 26 U.S.C. 5845(a) and were subject to the transfer tax of Section 5811(a); (2) that the Bren and Thompson machine guns were made by petitioner within the meaning of Section 5821(a) and were therefore subject to the $200 per firearm making tax imposed by that provision; and (3) that the United States had a valid tax lien against all property or rights to property belonging to petitioner, including his undivided one-half interest in the real property located in Collinsville, Illinois (Pet. App. A3; R. 1a-5a). Accordingly, the district court entered judgment in favor of the government in the amount of $76,409.10, plus interest, and a foreclosure decree (Pet. App. A3-A4; R. 8a-11a). The court of appeals affirmed (Pet. App. A1-A12).[3]

1. The decision below correctly upheld petitioner's liability for excise tax on the transfer of firearms. Petitioner argues (Pet. 12-14) that the transfer tax may not be imposed because the National Firearms Act, ch. 757, 48 Stat. 1236 (26 U.S.C. 5801-5872) violates the Self-Incrimination Clause of the Fifth Amendment.[4] When this issue was first raised by

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[3] The court of appeals remanded the case to correct a clerical error in the amount of the judgment (Pet. App. A7-A8, A12).

[4] Petitioner errs in asserting (Pet. 11) that the district court did not have original jurisdiction in this case. See

petitioner in a motion under 28 U.S.C. 2255 to vacate his sentence for failure to pay the tax, the court of appeals remanded that case to the district court to hold an evidentiary hearing to determine whether manufacturers and transferors of "firearms" were a suspect class under *Haynes* v. *United States*, 390 U.S. 85 (1968). See *Lauchli* v. *United States*, 432 F.2d 1207 (7th Cir. 1970).[5] The district court determined that manufacturers and transferors of firearms were not a suspect class, and the court of appeals affirmed. *Lauchli* v. *United States*, 481 F.2d 408 (7th Cir. 1973). Contrary to petitioner's contentions (Pet. 14), the court below correctly determined that petitioner was now collaterally estopped from relitigating that issue in this proceeding (Pet. App. A6-A7). See *Montana* v. *United States*, 440 U.S. 147, 153-154 (1979).

Petitioner also argues that the National Firearms Act creates a suspect class under the Fifth Amendment with respect to the $200 per firearm making tax imposed by Section 5821.[6] But if manufacturers

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28 U.S.C. 1340, 1345; 26 U.S.C. 7402 of the Internal Revenue Code of 1954.

[5] In *Haynes*, this Court held that former Section 5841, which required anyone in possession of a firearm, legally or illegally, to register the firearm, violated the self-incrimination clause of the Fifth Amendment because the registration of the firearm posed an immediate threat of criminal prosecution under former Sections 5851 and 5861 (see 390 U.S. at 95-96). None of these provisions, which were modified or repealed by the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, is involved in this case.

[6] The firearm-making tax was not involved in taxpayer's 1965 criminal conviction. Hence, petitioner is not estopped by any prior proceedings from arguing that the National Firearms Act creates a suspect class with respect to the firearm-making tax.

of firearms are not an inherently suspect criminal class, as the court below previously held, then those who make firearms, without being engaged in a business, are likewise not a suspect class. See generally, *Snook* v. *United States*, 451 F.2d 329 (5th Cir. 1971).

Accordingly, petitioner is liable for the civil tax assessments at issue here under 26 U.S.C. 5811(a) and 5821(a). See *Haynes* v. *United States*, *supra*, 390 U.S. at 90, 98; *Grosso* v. *United States*, 390 U.S. 62, 69 n.7 (1968).[7]

2. Petitioner further argues (Pet. 14-18) that the length of time consumed in the proceedings, from the date the initial complaint was filed to the date the findings of fact and conclusions of law were issued (a period of almost eight years), denied him due process because of the resulting prejudice to his case. But due process does not require that the defendant in civil cases be given a speedy trial. See *Ad Hoc Committee on Judicial Administration* v. *Commonwealth of Massachusetts*, 488 F.2d 1241, 1244 (1st Cir. 1973). Even on the assumption that delay in civil proceedings may violate due process, the aggrieved party

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[7] There is no merit to petitioner's argument (Pet. 12) that the decision here conflicts with *Lauchli* v. *United States*, 402 F.2d 455, 456 (8th Cir. 1968), which involved a completely separate firearms transfer from that presented here. There, the court reversed petitioner's *criminal* conviction for transferring firearms without paying any transfer tax in light of *Marchetti* v. *United States*, 390 U.S. 39 (1968); *Grosso* v. *United States*, *supra*; and *Haynes* v. *United States*, *supra*. *United States* v. *U.S. Coin and Currency*, 401 U.S. 715 (1971) (Pet. 12-13), involving a forfeiture statute, is likewise irrelevant, as is this Court's order (402 U.S. 938 (1971)) vacating and remanding petitioner's case involving the forfeiture of the firearms in light of these decisions. See *United States* v. *U.S. Coin and Currency*, *supra*, 401 U.S. at 718.

bears the burden of showing that prejudice resulted from the delay. Cf. *Smith* v. *United States*, 577 F.2d 1025, 1027 (5th Cir. 1978); *United States ex rel. Sims* v. *Sielaff*, 563 F.2d 821, 828 (7th Cir. 1977). Petitioner has made no such showing. To the contrary, during this delay petitioner benefited from any increase in the value of his real property subject to the tax lien foreclosed in this case, and has prolonged the period during which he possessed this real property.

Although petitioner further alleges (Pet. 14-16) that during the delay witnesses were lost and memories dulled, he never indicated to the district court that he wanted to call any person to testify other than himself (Sept. 11, 1972 Tr. 15). There has been no showing of any dilatory acts on the part of the government in these proceedings. Rather, the proceedings were delayed principally by the numerous motions filed by petitioner (Pet. App. A9; Sept. 11, 1972 Tr. 3), and the settlement negotiations he initiated (May 8, 1973 Tr. 4). Finally, the fact that the district court had the case under advisement for three years is not attributable to the government.

Petitioner also suggests (Pet. 8-9, 16-17) that the court below erred in finding no prejudice because of the district judge's health. Even though the district judge was ill at the time he issued the findings of fact and conclusions of law, the court below correctly held that no evidence in the record indicated that his condition interfered with his mental capacity (Pet. App. A9-A10). Indeed, the findings of the district court, partially in favor of petitioner and partially in favor of the government, indicate that the district judge fully exercised his judicial functions (Pet. App. A10).

3. Finally, petitioner contends (Pet. 10-11, 18-20) that the government's case should be dismissed be-

cause the government agent who purchased the firearms in question used a false name and, in petitioner's view, violated 18 U.S.C. 1001 (Pet. App. A11 n.2). Section 1001 provides for criminal penalties for the commission of any fraudulent acts against the federal government. The purpose of Section 1001 is not to prohibit the use of false identities by undercover agents, but to protect the government from harmful fraud and false information. See *United States* v. *Bramblett*, 348 U.S. 503 (1955).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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